

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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HARRY GEANACOPULOS, et al.,

Plaintiff(s),

v.

NARCONON FRESH START d/b/a  
RAINBOW CANYON RETREAT, et al.,

Defendant(s).

Case No. 2:14-CV-629 JCM (NJK)

ORDER

Presently before the court is a motion to dismiss filed by defendants Association for Better Living and Education International (ABLE) and Narconon International (hereinafter “defendants”) pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6). (Doc. #13). Plaintiffs Harry Geanacopulos, Lauren Geanacopulos, and Peter Geanacopulos filed a response to the motion. (Doc. #17). Defendants filed a reply. (Doc. #22).

**I. Background**

Plaintiffs Harry and Lauren Geanacopulos (hereinafter “plaintiffs”) allege that on or about November 27, 2013, they spoke on the telephone with an individual named Dan Carmichael, who claimed to be a Narconon representative. Plaintiffs expressed interest in finding a drug counseling center for their son, Peter, and Carmichael recommended the Narconon Fresh Start (NFS) program in Nevada.

According to plaintiffs, Carmichael indicated that the NFS program has more than a 76 percent success rate, that there would be a licensed physician on site at all times, and that the program was secular in nature. He directed plaintiffs to the Rainbow Canyon Retreat website at

1 www.rainbowcanyonretreat.org, which further detailed the NFS program. Relying on  
 2 representations by Carmichael and the website, plaintiffs paid \$30,000 up front to NFS and  
 3 signed a contract with NFS for Peter's drug treatment.

4 Plaintiffs allege that upon his arrival at the NFS facility, Peter was mistreated. They claim  
 5 that he was forced to sign away his legal rights and practice scientology. They further claim that  
 6 Peter was forced to take dangerously high doses of vitamins and sit in a sauna for 30 hours each  
 7 week, causing him to suffer from heart palpitations. Plaintiffs allege that there were no medical  
 8 personnel overseeing Narconon students and that NFS did not treat Peter for his substance abuse  
 9 problems.

10 Rainbow Canyon Retreat is a Narconon facility run by NFS, a California corporation  
 11 with its principal place of business in California. NFS transacts business in Nevada through the  
 12 Rainbow Canyon Retreat facility.

13 Defendants ABLE and Narconon International are non-profit organizations incorporated  
 14 and headquartered in California. ABLE owns the Narconon trademark and licenses it to  
 15 Narconon International, who sub-licenses it to NFS. Plaintiffs claim that defendants transact  
 16 business in Nevada through NFS as its parent companies and principals.

17 Plaintiffs' complaint includes claims for breach of contract, fraud, negligent  
 18 representation, intentional infliction of emotional distress, mail and wire fraud under RICO,  
 19 negligence, negligence per se, breach of the implied covenant of good faith and fair dealing, and  
 20 civil conspiracy. Plaintiffs' claims are based on the representations of Carmichael and the NFS  
 21 website as well as Peter's alleged mistreatment at the NFS facility. Plaintiffs contend that  
 22 defendants ABLE and Narconon International are liable under alter ego and agency theories.

## 23 **II. 12(b)(2) Dismissal for Lack of Personal Jurisdiction**

### 24 **a. Legal Standard**

25 To avoid dismissal for lack of personal jurisdiction on the pleadings, a plaintiff bears the  
 26 burden of demonstrating that his or her allegations would establish a *prima facie* case for  
 27 personal jurisdiction. *See Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008). A plaintiff  
 28 must demonstrate jurisdiction over each defendant individually. *Sher v. Johnson*, 911 F.2d 1357,

1 1365 (9th Cir. 1990). However, allegations in the plaintiff's complaint must be taken as true and  
 2 considered in plaintiff's favor. *Rio Props., Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1019 (9th  
 3 Cir. 2002).

4 Nevada has authorized its courts to exercise jurisdiction over persons "on any basis not  
 5 inconsistent with . . . the Constitution of the United States." Nev. Rev. Stat. § 14.065. An  
 6 assertion of personal jurisdiction must comport with due process. *Fiore v. Walden*, 688 F.3d 558,  
 7 573 (9th Cir. 2012). For specific jurisdiction, a plaintiff must demonstrate that each nonresident  
 8 defendant has at least "minimum contacts" with the relevant forum. *Schwarzenegger v. Fred*  
 9 *Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004).

10 The Ninth Circuit has established a three-prong test for analyzing an assertion of specific  
 11 personal jurisdiction:

- 12 (1) The non-resident defendant must purposefully direct his activities or  
 13 consummate some transaction with the forum or resident thereof; or perform  
 14 some act by which he purposefully avails himself of the privilege of conducting  
 15 activities in the forum, thereby invoking the benefits and protections of its laws;  
 16 (2) the claim must be one which arises out of or relates to the defendant's forum-  
 17 related activities; and (3) the exercise of jurisdiction must comport with fair play  
 18 and substantial justice, i.e., it must be reasonable.

19 *Id.* at 802. "The plaintiff bears the burden of satisfying the first two prongs of the test. If  
 20 the plaintiff fails to satisfy either of these prongs, personal jurisdiction is not established in the  
 21 forum state." *Id.* (internal citations omitted).

22 "The purposeful availment prong of the minimum contacts test requires a qualitative  
 23 evaluation of the defendant's contact with the forum state, in order to determine whether [the  
 24 defendant's] conduct and connection with the forum State are such that [the defendant] should  
 25 reasonably anticipate being haled into court there." *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell*  
 26 *& Clements Ltd.*, 328 F.3d 1122, 1130 (9th Cir. 2003) (citations omitted) (internal quotation  
 27 marks omitted).

28 In tort cases, "jurisdiction may attach if the defendant's conduct is aimed at or has an  
 effect in the forum state." *Panavision Intern., L.P. v. Toeppen*, 141 F.3d 1316, 1321 (9th Cir.  
 1998) (citing *Calder v. Jones*, 465 U.S. 783 (1984)). Under the "effects test," personal

1 jurisdiction is appropriate where a defendant targeted the forum state with intentional acts and  
 2 knew that harm would likely be suffered there as a result. *Id.*

3 **b. The Court's Jurisdiction Over Narconon International**

4 Defendant Narconon International claims that it has no ownership or control over NFS  
 5 and is simply its licensor. (Doc. #13). Narconon International lists Rainbow Canyon Ranch on its  
 6 website, but alleges that this advertising is not directed toward Nevada residents and thus is  
 7 insufficient for personal jurisdiction.

8 Notably, posting a passive website in the forum state is insufficient to confer personal  
 9 jurisdiction. *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419-20 (9th Cir. 1997). Rather,  
 10 "something more" is required to show that a defendant purposefully directed its conduct in a  
 11 substantial way to the forum state. *Id.* at 418. This test is met where a defendant targets the  
 12 forum state through advertising. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019-21  
 13 (9th Cir. 2002).

14 Narconon International's website, [www.narconon.org](http://www.narconon.org), lists Narconon drug rehabilitation  
 15 centers throughout the United States. It includes categories for the Western United States and  
 16 Nevada in particular. Visitors can click these links and interact with the website to obtain more  
 17 information. The website lists the NFS facility's address, phone number, email, and a toll-free  
 18 number.

19 Moreover, Narconon International's website includes particular sections advertising the  
 20 NFS facility to residents of Reno and Las Vegas based on the facility's proximity to those cities.  
 21 This type of targeted advertising elevates Narconon International's website from one that merely  
 22 provides information to one constituting purposeful availment.

23 Additionally, Narconon International's website makes no effort to clarify that Narconon  
 24 International is an entity distinct from NFS or that it is merely NFS's licensor. This conduct  
 25 should have put Narconon International on notice that it could be subject to suit in Nevada.

26 Based solely on Narconon International's contacts with Nevada through its website, the  
 27 court finds that Narconon International is subject to personal jurisdiction in Nevada. If Narconon  
 28 International wished to avoid suit in Nevada, it could have refrained from advertising Narconon

1 facilities to Nevada residents on its website or clearly clarified its role as licensor. The possibility  
2 of litigation against Narconon International in Nevada was foreseeable based on its  
3 advertisement of the NFS facility to Nevada residents.

4 Further, Narconon International's conduct in Nevada, namely its online advertising and  
5 representations about the NFS facility, gave rise to the litigation at issue. While plaintiffs' claims  
6 are based on Carmichael and NFS's portrayals of the program, the facility that connects  
7 Narconon International to Nevada allegedly caused the harm at issue. Therefore, the second  
8 prong of relatedness for specific jurisdiction is met.

9 Finally, it is not unfair to subject Narconon International to jurisdiction in Nevada based  
10 on its contacts with the state. Narconon International concedes that its staff has visited NFS's  
11 Rainbow Canyon location twice. Additionally, Nevada is likely the most convenient forum for  
12 the plaintiffs and witnesses, as the claims at issue arose from conduct occurring at the NFS  
13 facility in Nevada.

14 For these reasons, the court will deny Narconon International's request for dismissal due  
15 to lack of personal jurisdiction.

16 **c. The Court's Jurisdiction Over ABLE**

17 Plaintiffs' response to defendants' motion to dismiss alleges that ABLE is subject to  
18 personal jurisdiction in Nevada based on its control over NFS's day-to-day operations. (Doc.  
19 #17). In particular, plaintiffs claim that certain pamphlets published by Narconon International  
20 provide evidence of ABLE's control over NFS.

21 Notably, all of plaintiffs' specific factual allegations center on the connections of  
22 Narconon International, not ABLE, with NFS. ABLE is mentioned only once in the pamphlets,  
23 as a source from which Narconon International allows Narconon programs to order books. This  
24 is insufficient to confer personal jurisdiction over ABLE.

25 The many websites to which plaintiffs refer similarly do not provide evidence of ABLE's  
26 minimum contacts with Nevada. The only reference to ABLE on these websites addresses its  
27 ownership of the Narconon trademark. ABLE's own website makes no mention of Nevada or the  
28 NFS facility there. Ownership or licensing alone of the Narconon trademark is insufficient to

1 confer personal jurisdiction over ABLE.

2 Plaintiffs alternatively argue that the contacts of NFS may be imputed to ABLE under an  
3 alter ego theory. To prove personal jurisdiction on this basis, a plaintiff must ultimately show  
4 “(1) that there is such unity of interest and ownership that the separate personalities [of the two  
5 entities] no longer exist and (2) that failure to disregard [their separate identities] would result in  
6 fraud or injustice.” *Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) (quoting *Am. Tel. &  
7 Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir. 1996)).

8 Plaintiffs’ complaint alleges the following:

9 54. Defendants Narconon Fresh Start and [Narconon International] have all  
10 appearances of being a corporate sham illusion and mere instrumentalities of  
11 Defendant ABLE.

12 55. ABLE heavily influences Narconon Fresh Start and [Narconon  
13 International] and governs and controls nearly every aspect of their business  
14 activities.

15 56. There is such unity of interest and ownership among Narconon Fresh  
16 Start, [Narconon International], and ABLE that they are inseparable from one  
17 another.

18 57. The separate corporate existences of Narconon Fresh Start, [Narconon  
19 International], and ABLE is [sic] a design or scheme to perpetrate a fraud . . . to  
20 recruit for and promote the Scientology religion.

21 (Doc. #4). Based on the foregoing standard, the court must take these allegations as true  
22 if they are plausible.

23 Notably, ABLE, Narconon International, and NFS are connected through the licensing  
24 and sublicensing agreements of the Narconon trademark. Further, plaintiffs allege that the  
25 pamphlets cited provide evidence of ABLE’s control over NFS operations. While these  
26 allegations are not sufficient to prove plaintiffs’ claims against ABLE, they are sufficient to  
27 preclude dismissal for lack of personal jurisdiction.

28 Plaintiffs also argue that personal jurisdiction over ABLE is appropriate based on an  
agency theory. Courts will impute contacts of an agent to a principal where the agent is a  
subsidiary that was “either established for, or is engaged in, activities that, but for the existence  
of the subsidiary, the parent would have to undertake itself.” *Chan v. Society Expeditions, Inc.*,

39 F.3d 1398, 1405 fn. 9 (citing *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406 (9th Cir. 1977)).

Plaintiffs state that without NFS's services, "there would be no Narconon patients to sell the program." (Doc. #17). For the reasons above, plaintiffs' allegations are sufficient to allow plaintiffs to proceed against ABLE. Plaintiffs allege sufficient facts that, when taken as true, meet the test for personal jurisdiction. Namely, if plaintiffs ultimately show that ABLE acts as an alter ego or principal to NFS, ABLE's connections to Nevada will meet the minimum contacts test.

For the foregoing reasons, the court will deny ABLE's motion to dismiss for lack of personal jurisdiction.

### **III. 12(b)(6) Dismissal for Failure to State a Claim**

Plaintiffs allege that defendants are liable for breach of contract, fraud, negligent representation, intentional infliction of emotional distress, mail and wire fraud under RICO, negligence, negligence per se, breach of the implied covenant of good faith and fair dealing, and civil conspiracy. They assert that defendants are responsible for NFS's representations and treatment methods under an alter ego or agency theory. These are plaintiffs' only theories of liability against defendants.

#### **a. Legal Standard**

A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "[a] short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citation omitted).

"Factual allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Iqbal*, 129 S.Ct. at 1949 (citation

omitted).

In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, the court must accept as true all well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 1949.

Second, the court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A claim is facially plausible when the plaintiff's complaint alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 1949.

Where the complaint does not permit the court to infer more than the mere possibility of misconduct, the complaint has "alleged – but not shown – that the pleader is entitled to relief." *Id.* (internal quotations omitted). When the allegations in a complaint have not crossed the line from conceivable to plausible, plaintiff's claim must be dismissed. *Twombly*, 550 U.S. at 570.

The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). The *Starr* court stated, "First, to be entitled to the presumption of truth, allegations in a complaint or counterclaim may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively. Second, the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." *Id.*

#### **b. Discussion**

Plaintiffs assert claims against defendants ABLE and Narconon International on the basis that they are the principals and alter egos of NFS. Nevada courts will find a defendant liable under an alter ego theory if the plaintiff proves three factors by a preponderance of the evidence. *Ecklund v. Nevada Wholesale Lumber Co.*, 93 Nev. 196, 197 (1977). First, the corporation must be influenced and governed by the person asserted to be its alter ego. *Id.* Second, there must be such unity of interest and ownership that one is inseparable from the other. *Id.* Third, the facts



1 must be such that adherence to the fiction of separate entity would, under the circumstances,  
2 sanction a fraud or promote injustice. *Id.*

3 Plaintiffs' complaint alleges that Narconon International "exercises control over the time,  
4 manner, and method of Fresh Start's operations." (Doc. #4). Further, plaintiffs assert that "ABLE  
5 heavily influences Narconon Fresh Start and [Narconon International] and governs and controls  
6 nearly every aspect of their business activities." In support of these allegations, plaintiffs cite to  
7 Narconon International pamphlets detailing Narconon International's oversight over Narconon  
8 facilities.

9 Plaintiffs present largely conclusory allegations to show that Narconon International  
10 functions as an alter ego of NFS. Nevertheless, in evaluating a complaint for dismissal, the court  
11 must take all plausible factual allegations as true. While plaintiffs' complaint alone does not  
12 present sufficient evidence to support an alter ego or agency theory, the court will not foreclose  
13 plaintiffs' opportunity to do so through discovery. Considering their current allegations regarding  
14 Narconon International's oversight of NFS, it is plausible that plaintiffs could show an alter ego  
15 or agency relationship.

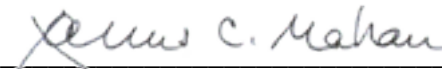
16 For these reasons, the court will deny defendants' request for dismissal for failure to state  
17 a claim on which relief can be granted.

18 **IV. Conclusion**

19 Accordingly,

20 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion to  
21 dismiss be, and the same hereby is, DENIED.

22 DATED August 18, 2014.

23   
24 UNITED STATES DISTRICT JUDGE